

Preliminary Technical Committee Recommendations and Questions on the Acupuncturists' Proposal for a Change in Scope of Practice for the June 24, 2013 Public Hearing

The members of the Acupuncturists' Technical Review Committee formulated preliminary recommendations on the proposal to eliminate the requirement for a practice agreement during their June 3, 2013 meeting by taking action on the six statutory criteria of the Regulation of Health Professions Act under Nebraska Revised Statutes, Section 71-6221. These six criteria and the Committee recommendations on each of them are described below. These actions, along with the subsequent actions taken on the entire proposal, comprise the committee's preliminary recommendations.

The members of the Acupuncturists' Technical Review Committee request that testifiers address not only the preliminary recommendations on the proposal, but the specific questions raised by Committee members as well.

Action taken on the six statutory criteria:

Criterion one: **The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice.**

Voting aye were Lopez, Pedersen, and Millea. Voting nay were Langemach and Black. Dr. Warner abstained. The proposal passed this criterion.

Some of the committee members who voted in favor of the proposal made the observation that the current situation wherein acupuncture patients must have received a physical examination by a physician or osteopath within the previous ninety days is too restrictive. Some of those who voted against the proposal on this criterion indicated that they were not convinced that the current situation is as serious a problem as the applicants claim. One committee member questioned if specific conditions would be applied if the physician visit requirement were to be removed. Other committee members indicated that they need more information and that the language needs clarification and purpose.

Criterion two: **Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public.**

Voting aye were Pedersen and Langemach. Voting nay were Millea, Lopez, and Black. Dr. Warner abstained. The proposal failed on this criterion.

Those committee members that voted against the proposal said that they wanted more information as to precisely what the benefit to the public would be from this proposed change. One committee member stated that the restrictions at which the proposal is directed are ignored in practice, anyway. One committee member said that change is needed but that the impact of the current proposal is not clear, whether positive or negative. Another member asked how it is determined that the physician visit requirement limits the scope of practice other than discouraging patients from going to

an acupuncturist. One committee member indicated that the proposal might benefit the public but is unsure as to what the change is in terms of health and safety.

***Criterion three:* The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public.**

Voting aye were Langemach and Pedersen. Voting nay were Millea and Black. Lopez abstained, which created a tie. Dr. Warner broke the tie by voting against the proposal. The proposal failed on this criterion.

Those committee members voting in favor of the proposal indicated that they had seen no evidence of new harm to the public from states wherein the physician visit requirement has been eliminated. Those who voted against the proposal indicated that they were not sure of the possible impacts of the proposed change, or that they needed more information on its possible impact. One committee member questioned why Nebraska does not require verification of continuing education hours for licensure renewal.

***Criterion four:* The current education and training for the health profession adequately prepares practitioners to perform the new skill or service.**

Voting aye were Langemach, Pedersen, Millea, Black, and Lopez. Dr. Warner abstained. The proposal passed this criterion. There were no additional comments.

***Criterion five:* There are appropriate post-professional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill of service in a safe manner.**

Voting aye were Langemach, Pedersen, and Lopez. Voting nay were Millea and Black. Dr. Warner abstained. The proposal passed this criterion. There were no additional comments.

***Criterion six:* There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.**

Voting aye were Langemach, Pedersen, Millea, Black, and Lopez. Dr. Warner abstained. The proposal passed this criterion. There were no additional comments.

Action taken on the entire proposal was as follows:

Is the proposal in the best interest of the public health and welfare of Nebraskans? Voting aye were Pedersen and Langemach. Voting nay were Millea and Black. Ms. Lopez abstained, which created a tie. Dr. Warner broke the tie by voting against the proposal. The proposal was not approved.

Those voting in favor of the proposal said that there is no evidence from other states that eliminating the referral requirement has caused any new harm to the public. Those voting

against the proposal said that they were unsure of the possible impact of the proposal and wanted more information.

The committee members made the following ancillary recommendations:

Ms. Black moved and Mr. Langmach seconded that the rules and regulations for licensed acupuncturists be updated to replace the required examination with the more current biomedical examination. Voting aye were Black, Langemach, Lopez, Millea, and Pedersen. There were no nay votes. Warner abstained from voting. This recommendation was approved.

Mr. Langemach moved and Ms. Pedersen seconded that the Board of Medicine and Surgery, in consultation with the acupuncturists, develop a jurisprudence exam for acupuncturists. Voting aye were Black, Langemach, Lopez, and Pedersen. There were no nay votes. Warner and Millea abstained from voting. This recommendation was approved.

The committee members request that testifiers respond to the following ideas for change:

- Should specific health conditions that should indicate referral or consultation be defined?
- Should specific rules of misconduct be defined?
- Should a specific period of time be defined during which acupuncture treatment must be successful or else the patient must be referred to another type of health care provider?
- Should a consultation requirement be defined to include a waiver provision which would free the acupuncturist of liability if the patient refuses a referral to another provider?
- Should the rules and regulations of acupuncturists in Nebraska be revised to replace the examination provided therein with the more current biomedical examination?
- Should health professionals other than physicians and osteopaths be considered as practitioners from whom an acupuncture patient can receive a ninety-day physical examination? If so, what other professionals should be considered?